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Nos. 87-2068, 88-60, 88-61

SUPREME COURT, D.C.  
**FILED**  
SEP 20 1988

JOSEPH E. SPANOL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1988

ALABAMA POWER CO., *et al.*,  
v. *Petitioners,*

LEE M. THOMAS, *et al.*,  
*Respondents.*

OHIO POWER COMPANY AND ORMET CORPORATION,  
v. *Petitioners,*

LEE M. THOMAS, *et al.*,  
*Respondents.*

NATIONAL COAL ASSOCIATION, *et al.*,  
v. *Petitioners,*

NATURAL RESOURCES DEFENSE COUNCIL, *et al.*,  
*Respondents.*

On Petitions for a Writ of Certiorari to the  
United States Court of Appeals  
for the District of Columbia Circuit

**SUPPLEMENT TO PETITIONS**

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**On Petitions for a Writ of Certiorari to the  
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**SUPPLEMENT TO PETITIONS**

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This Supplement to the above-captioned Petitions for a Writ of Certiorari is being filed pursuant to Rule 22.6 of this Court. The intervening matter requiring the filing of this Supplement is a telephone call from the Chief Deputy Clerk of the Supreme Court on September 16,

1988. In that call, the Chief Deputy Clerk indicated that, pursuant to 28 U.S.C. § 1254(1) (1982) and Rule 20 of this Court, there should be no duplication of Petitioners on multiple Petitions for Certiorari seeking review of separate cases that were disposed of in one judgment. Pursuant to the Chief Deputy Clerk's suggestion, this Supplement responds to this issue by eliminating the duplication of Petitioners in the above-captioned Petitions.

In the court below, numerous petitions for review were filed challenging various portions of a complex set of regulations promulgated by the U.S. Environmental Protection Agency. All but two of these petitions were consolidated by the court. The court issued one judgment in these cases.

The parties joining as Petitioners in each of these three Petitions for Certiorari were, in the court below, (1) for Petition No. 87-2068, petitioners in Case Nos. 85-1543, 85-1556, 85-1558, 85-1560, 85-1557, and 85-1568, all of which were consolidated with several other petitions for review; (2) for Petition No. 88-60, petitioners in Case Nos. 86-1331 and 86-1362, which were consolidated with each other but not with any other petition for review; and (3) for Petition No. 88-60, respondent-intervenors in Case Nos. 85-1488, 85-1489, 85-1554, and 85-1552.

In light of this alignment of parties below, counsel for Petitioners believed that, under Rule 19.4 of this Court, a joint Petition could be filed by all parties below who had litigated the issue presented in the Petition for Certiorari, and a party to more than one case below could join in two Petitions presenting distinct issues arising out of different cases below. According to the Chief Deputy Clerk, however, where one judgment has been entered as to a group of cases (only some of which were consolidated by the lower court), a party to more than one of the cases can appear as a Petitioner on only one Petition.

As to other Petitions, such a party must indicate its support as a Respondent pursuant to Rule 19.6 of this Court. Under this interpretation of Rule 19.6, there may not be duplication of Petitioners regardless of the number of cases involved in the court below and regardless of the different alignment of parties in those cases.

To remedy the duplication of Petitioners in these three Petitions for Certiorari, the Chief Deputy Clerk recommended the filing of this Supplement to delete certain parties as Petitioners on each of the Petitions. Without expressing agreement with the Chief Deputy Clerk's interpretation of the relevant authorities, counsel for Petitioners therefore file this Supplement to the Petitions.

Pursuant to the foregoing discussion, the following parties declare that they are no longer Petitioners in the Petitions indicated:

- |              |  |
|--------------|--|
| No. 87-2068: | Ohio Power Company,<br>Edison Electric Institute, and<br>National Coal Association             |
| No. 88-60:   | Ormet Corporation  |
| No. 88-61:   | Alabama Power Company, <i>et al.</i><br>(with the exception of the Edison Electric Institute). |

Each of these parties, in its new role as Respondent, declares now that it fully supports the Petition in which it was previously a Petitioner.

In sum, the following parties are now exclusively the Petitioners in these Petitions:

- |              |  |
|--------------|--|
| No. 87-2068: | Alabama Power Company, <i>et al.</i><br>(excluding Ohio Power Company<br>and Edison Electric Institute),<br>United Mine Workers of America,<br>and Ormet Corporation |
|--------------|--|

No. 88-60: Ohio Power Company  
 No. 88-61: National Coal Association and  
 Edison Electric Institute.

It should be noted that, as a result of eliminating the duplication of Petitioners, the lead party in each case has not changed. In addition, the Counsel of Record for each Petition remains the same. The Reply Briefs to be filed shortly in these Petitions will reflect these changes.

### CONCLUSION

For the foregoing reasons, the Petitioners on each of the Petitions are hereby changed as indicated previously.

Respectfully submitted,

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September 20, 1988

